LETTER OF FINDINGS NUMBER: 96-0129 ST
STATE GROSS RETAIL TAX
For Years 1993, 1994, AND 1995

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ISSUES

Issue I: **State Gross Retail Tax** – Notification required to rescind a prior ruling.

Authority: IC § 6-8.1-3-3; 45 IAC 15-3-2

Taxpayer protests the assessment of tax on lease of aircraft after having an earlier protest sustained based on a ruling for years prior to the current assessment.

Issue II: **State Gross Retail Tax** – Application to lease for an aircraft used in interstate transportation.

Authority: IC § 6-2.5-3-5; Complete Auto Transit v. Brady, 430 U.S. 274 (1977)

Taxpayer protests application of sales and use tax to lease payments for an aircraft used in interstate transportation contending that the application violates the commerce clause of the U.S. Constitution.

STATEMENT OF FACTS

Taxpayer sought and received a ruling in 1987 (hereinafter 'ruling') from the department of Revenue which stated taxpayer's lease payments for an aircraft were not subject to sales tax since the aircraft was used exclusively to conduct business in interstate commerce. The Department ruled that the lease payments made by taxpayer were exempt from Indiana sales and use tax. Subsequent to this ruling, the Department audited taxpayer for the years 1986-1989. The audit resulted in a proposed assessment of sales and use tax on the lease payments for the aircraft. Taxpayer protested these assessments based on the 1987 ruling. The protest was sustained in Letter of Findings 92-0040ST

(hereinafter LOF) issued in 1992 which clarified the scope and application of the 1987 ruling.

The taxpayer refinanced the aircraft (hereinafter 'the new lease') and the Department sent a letter dated August 4th, 1994 advising Taxpayer that the 1987 ruling was rescinded effective July 1st, 1994, and that any aircraft purchased or leased after that date would be subject to Indiana sales and use tax. Taxpayer requested clarification of the situation for leases in effect on July 1st, 1994. In response, the Department initially agreed in a letter of clarification dated September 28, 1994 that the 1987 ruling would apply to the new lease. However; on January 24th, 1995, the Department sent taxpayer another letter, informing taxpayer that the 1992 Letter of Findings had provided adequate notice that subsequent leases would not be protected by the 1987 ruling and that sales and use tax would apply to the new lease. Consequently; sales and use tax was assessed and taxpayer is now appealing from this decision.

I. **State Gross Retail Tax** – Notification required to rescind a prior ruling.

DISCUSSSION

The language in the aforementioned 1992 Letter of Finding (LOF) was based on an appeal of a finding of liability contrary to the 1987 ruling. The 1992 LOF was the result of an appeal from an assessment on the lease of aircraft used in interstate commerce. This appeal was sustained, not on the merits of the 1987 ruling, but on the strength of the statutory requirement that a ruling could not be retroactively overturned without significant changes in the applicable law. The reassessment was initiated by the auditor based on a reversal of a Missouri tax decision in Director of Revenue v. Superior Aircraft Leasing Company, Inc. 734 S.W.2d 504, (Missouri Supreme Court 1987). The 1992 LOF cited by the taxpayer specifically states that the protest is being upheld because,

> In the instant case, the audit has established no change in either Indiana law or the taxpayer's situation which would warrant invalidating the ruling. The criteria imposed by 45 IAC 15-3-2 are clear and have not been met. It should be noted however, that the Department may invalidate rulings and make retroactive assessments as provided in this regulation. In this instance, however, such an assessment would not be warranted, because the circumstances surrounding the original ruling have not changed.

The code section cited above, 45 IAC 15-3-2, states in relevant part:

> (c) As a general rule, the modification of a rule will not be applied retroactively. If a rule is later found to be inconsistent with changes in the law by statute or by decisions of a court of precedence, the rule will not protect a taxpayer in the same or subsequent years once the rule has been determined to be inconsistent with the law.
>
> ….

(d) (2) As a general rule, the revocation or modification of a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to a taxpayer whose tax liability was directly involved in such a ruling. Under circumstances where a ruling to a taxpayer is revoked with retroactive effect, the notice to such taxpayer will set forth the grounds upon which the revocation is being made and the extreme circumstance under which revocation is being applied retroactively.

As the LOF indicated, no extreme circumstance, as required by 45 IAC 15-3-2, was presented in the audit report to justify the reversal of the 1987 ruling.

The reversal of the assessment by the 1992 LOF was based on IC § 6-8.1-3-3 and 45 IAC 15-3-2. The 1992 LOF, which reversed specifically on 45 IAC 15-3-2 (which explicitly notes IC § 6-8.1-3-3 as its authority) and not on the merits of the underlying tax issues, stated:

> The taxpayer's contention that such a retroactive assessment is prohibited by IC § 6-8.1-3-3 is rendered moot by this finding and need not be addressed. This finding applies solely to the leases of the two aircraft under protest. If new aircraft are acquired, new leases obtained, or any of the circumstances in this case change, the taxpayer must notify the Department and request a new ruling.

The 1992 LOF sustaining the 1987 ruling found the auditor's reliance on the Missouri decision insufficient grounds for reversal of the ruling under the aforementioned Indiana statute and regulations. As cited above, the 1992 LOF also served to explicitly notify the taxpayer that while the 1987 ruling could be relied on for that transaction, it was not applicable beyond the stated circumstances. The contention that taxpayer could rely on the 1987 ruling after the notification in the 1992 LOF is without merit.

FINDINGS

Taxpayer's protest is denied, the 1987 ruling does not apply to the new lease.

II. **State Gross Retail Tax** – Application of sales tax on the lease of an aircraft used in interstate transportation.

DISCUSSSION

The use tax was assessed pursuant to IC § 6-2.5-3-3(b) which states:

> The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:
> (1) is acquired in a transaction which is an isolated or occasional sale; and
> (2) is required to be licensed or registered by this state for use in this state.

Taxpayer argues that the application of the sales tax on the lease of the aircraft runs afoul of constitutional limitations. Specifically, taxpayer cites Complete Auto Transit v. Brady, 430 U.S. 274 (1977) and its four-part test for determining whether a state tax violates the Commerce Clause. The test is summarized by the Court as follows:

> These decisions have considered not the formal language of the tax statute but rather its practical effect, and have sustained a tax against Commerce Clause challenge when the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State. Complete Auto Transit v. Brady, 430 U.S. 274 (1977) at 279.

First, the two corporations were conducting business in Indiana (lessor and lessee) and the aircraft was maintained and licensed in Indiana. Nexus with Indiana existed.

Second, taxpayer argues, however, that the tax is not fairly apportioned. Taxpayer notes that 99.76% of the miles flown were flown outside of Indiana. This argument does not address the relevant issue- the tax is not on the miles flown, but rather on a lease for the storage, maintenance, and licensing of an aircraft within Indiana.

Third, taxpayer contends that the tax discriminates against interstate commerce, inasmuch as the IC § 6-2.5-3-5 does not provide credit for taxes paid to other states and aircraft travelling exclusively in Indiana would not be subject to this tax. As with apportionment, taxpayer fails to note that the tax is on the Indiana lease for the storage, maintenance, and licensing of an aircraft within Indiana, not the miles flown by the aforementioned aircraft. Taxpayer provides no evidence, and does not allege, that taxpayer paid any taxes on this lease in any other state, nor does taxpayer demonstrate or allege that a different taxable amount would be assessed on a lease related to an aircraft used to fly intrastate than for a lease related to an aircraft used to fly about the globe.

Finally; taxpayer contends that the amount of the tax is disproportional to the services provided by the state. Aside from the protection afforded taxpayer's aircraft and maintenance facilities by the state's constabulary, should taxpayer suffer a breach of the lease, taxpayer has access to Indiana courts. Additionally, the licensing of the aircraft by Indiana grants reciprocity with the other states, nullifying the requirement of licensing the aircraft in these jurisdictions. Consequently, taxpayer's objection that the amount paid is disproportionate to the value received is not supportable.

FINDINGS

Taxpayer's protest is denied.

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